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DISTRICT COURT OF GUAM

MAR 12 2007

MARY L.M. MORAN
CLERK OF COURT

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FEB 28 2007

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

25

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LINDA G. AGUERO,

Defendant.

CRIMINAL CASE NO. 07-0000494.
~~06-00004~~

AMENDED *my*
PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, LINDA G. AGUERO, enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to Count IV and V of an Indictment charging her with Dealing in Firearms, in violation of Title 18, United States Code, Sections 922(a)(1)(A) and Section 2, and Dealing in Explosive Materials Without a License, in violation of 18 United States Code, Section ~~842(a)(1)~~ ^{842(a)(1)} and 18, United States Code, Section 2. The Government will move to dismiss Counts VIII, IX and X at time of sentencing.

2. The defendant, LINDA G. AGUERO, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of the possession, receipt, and distribution of firearms or ammunition, and related unlawful activities, including the

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1 disposition of profits from and assets relating to such activities. She agrees to testify fully and
2 truthfully before any grand juries and at any trials or proceedings against any co-conspirators if
3 called upon to do so for the United States, subject to prosecution for perjury for not testifying
4 truthfully. The United States will make this cooperation known to the Court prior to the
5 defendant's sentencing. The defendant further understands that she remains liable and subject to
6 prosecution for any non-violent Federal or Territorial offenses that she does not fully advise the
7 United States, or for any material omissions in this regard. In return for this cooperation, the
8 United States agrees not to prosecute defendant in the District of Guam or the Commonwealth of
9 the Northern Mariana Islands for any other non-violent Federal offenses which she reveals to
10 Federal authorities.

11 3. The defendant, LINDA G. AGUERO, understands and agrees that any and all assets or
12 portions thereof acquired or obtained by her as a direct or indirect result of illegal receipt,
13 possession, transportation, or trafficking in firearms, ammunition or explosives, or used to
14 facilitate such illegal activity shall be surrendered to the United States or any lawful agency as
15 may be directed by the Court. The assets to be surrendered include, but are not limited to, cash,
16 stocks, bonds, certificates of deposit, personal property and real property.

17 4. The defendant, LINDA G. AGUERO, further agrees to submit to a polygraph
18 examination by any qualified Federal polygraph examiner if called upon to do so by the
19 government. The defendant understands that such polygraph examinations may include, but will
20 not be limited to, her knowledge of or involvement in unlawful firearm and related activities, her
21 knowledge of others' involvement in such activities, and the identification of any and all assets
22 and conveyances acquired in whole or in part by the defendant or others through unlawful
23 firearm or explosive activities or the use of such assets or conveyances to further such unlawful
24 activities. Defendant understands that the government will rely on the polygraph in assessing
25 whether she has been fully truthful.

26 5. The defendant, LINDA G. AGUERO, understands that the maximum sentence for
27 Dealing in Firearms is five years imprisonment pursuant to 18 U.S.C. 924(a)(1), and the
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1 maximum sentence for Explosive Materials is ten years imprisonment pursuant to 844(a)(1), and
2 a \$250,000 fine/ ^{for each offense} Any sentence imposed shall include a term of supervised release of at least 3
3 years in addition to such terms of imprisonment, as well as such restitution as the court may
4 order and a \$200.00 special assessment fee. Defendant understands that if she violates a
5 condition of supervised release at any time prior to the expiration of such term, the court may
6 revoke the term of supervised release, thereby resulting in the additional incarceration of
7 defendant for not more than two (2) years.

8 The total special assessment fee of \$200.00 must be paid immediately upon sentencing.
9 The government will recommend a fine within the Sentencing Guidelines range. If defendant is
10 financially unable to immediately pay the fine in full, defendant agrees to make a full disclosure
11 of her financial status to the United States Attorney's Office by completing a Financial Disclosure
12 Form (OBD-500) for purpose of fixing a monthly payment schedule. Defendant understands
13 that, by law, interest accrues on any remaining balance of the debt. If defendant cooperates as set
14 forth in Paragraphs 2, 3, and 4, the government will recommend that defendant receive the
15 minimum term of incarceration legally available under the applicable statutes and Sentencing
16 Guidelines. If defendant does not fully cooperate as set forth in Paragraphs 2, 3, and 4, the
17 government will recommend a sentence of incarceration within the applicable statutes and
18 Guidelines range it may deem appropriate.

19 6. If defendant provides full, truthful, and substantial assistance to investigating
20 federal agencies, the government will move the Court, as provided by Section 5K1.1, United
21 States Sentencing Guidelines, hereinafter USSG, and 18 U.S.C. Section 3553(e), for a downward
22 departure from the Guidelines and the statutory minimum sentence. Defendant understands the
23 following:

24 (a) At or before the time of sentencing, the United States will advise the Court of
25 any assistance provided by defendant in the prosecution of another person who
26 has committed a criminal offense. It is understood and agreed that a motion for departure
27 shall not be made, under any circumstances, unless defendant's cooperation is
28 "substantial." The United States has made no promise, implied or otherwise, that
defendant will be granted a "departure" for "substantial assistance." Further, no promise
has been made that a motion will be made for departure even if defendant complies with
the terms of this agreement in all respects, but has been unable to provide "substantial
assistance."

1 (b) The United States agrees to consider the totality of the circumstances,
2 including but not limited to the following factors, in determining whether, in the
3 assessment of the U.S. Attorney, defendant has provided "substantial assistance"
4 which would merit a government request for a downward departure from the
5 applicable guideline sentencing range:

6 (1) the United States' evaluation of the significance and usefulness
7 of any assistance rendered by defendant;

8 (2) the truthfulness, completeness, and reliability of any
9 information or testimony provided by defendant;

10 (3) the nature and extent of defendant's assistance;

11 (4) any injuries suffered or any danger or risk of injury to defendant
12 or defendant's family resulting from any assistance provided by
13 defendant; and,

14 (5) the timeliness of any assistance provided by defendant.

15 © It is understood that even if a motion for departure is made by the United
16 States, based upon defendant's perceived "substantial assistance," the final
17 decision as to how much, if any, reduction in sentence is warranted because of
18 that assistance, rests solely with the District Court.

19 7. The defendant understands that to establish a violation of Dealing in Firearms, the
20 government must prove each of the following elements beyond a reasonable doubt:

21 First: the defendant was wilfully engaged in the business of dealing in firearms,
22 specifically a Nornico Rifle, Model SKS, 7.62 x 39 caliber, serial number
23 210031520, within the dates specified in the indictment;

24 Second: the defendant did not have a license as a firearms dealer; and ~~and~~

25 Third: the firearms were shipped or transported in interstate commerce.

26 The defendant understands that to establish a violation of Dealing in Explosive Materials
27 Without a License, the government must prove each of the following elements beyond a
28 reasonable doubt:

29 First: the defendant ~~was~~ ^{willfully} engaged in the business of
30 dealing in explosive materials, specifically commercial
31 blasting/detonating caps and pest control devices, and ~~within the dates specified~~
32 ~~in the indictment~~

33 Second: the defendant did not have a license, permitting her to act as a dealer in
34 explosive materials.

35 8. The defendant understands that the United States Probation Office will calculate

1 a "sentencing range" within the United States Sentencing Guidelines. The defendant understands
2 the Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the
3 sentence. The defendant also understands that the facts she stipulates to herein will be used by
4 probation, pursuant to § 1B1.2 of the Sentencing Guidelines, in calculating the advisory
5 guidelines level:

6 a. The defendant was born in 1967 and is a citizen of the United States.

7 b. If the defendant cooperates with the United States by providing information
8 concerning the unlawful activities of others, the government agrees that any self-incriminating
9 information so provided will not be used against defendant in assessing her punishment, and
10 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
11 in determining the applicable guidelines range.

12 c. On April 14, 2005, in the District of Guam, the defendant LINDA G. AGUERO
13 engaged in the business of dealing in firearms without a license to do so. LINDA G. AGUERO
14 wilfully sold a firearm, specifically a Nornico Rifle, Model SKS, 7.62 x 39 caliber, Serial
15 number 210031520, to another person and received U.S. Currency in exchange. At the time
16 LINDA G. AGUERO sold the Nornico SKS rifle, she did not have a license to do so.

17 Between February 25, 2005 and April 14, 2005, in the District of Guam, the defendant
18 LINDA G. AGUERO dealt in explosive materials, specifically five Pest Control
19 Devices/California Seals and three commercial blasting/detonating caps. Defendant LINDA G.
20 AGUERO sold the commercial blasting/detonating caps and Pest Control Devices to another
21 person. The commercial blasting/detonating caps and the Pest Control Devices/California Seals
22 are regulated explosive devices. At the time LINDA G. AGUERO sold the explosive, she did
23 not have a license to do so. *See* page 8, line 22.

24 d. The defendant understands that notwithstanding any agreement of the parties, the
25 United States Probation Office will make an independent application of the Sentencing
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1 Guidelines. The defendant acknowledges that should there be discrepancies in the final
2 sentencing guidelines range projected by her counsel or any other person, such discrepancy is not
3 a basis to withdraw her guilty plea.

4 9. The defendant understands that this plea agreement depends on the fullness and
5 truthfulness of her cooperation. Therefore, defendant understands and agrees that if she should
6 fail to fulfill completely each and every one of her obligations under this plea agreement, or make
7 material omissions or intentional misstatements or engage in criminal conduct after the entry of
8 her plea agreement and before sentencing, the government will be free from its obligations under
9 the plea agreement; thus defendant, in addition to standing guilty of the matters to which she has
10 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
11 crimes. In any such prosecution, the prosecuting authorities, whether Federal, State, or Local,
12 shall be free to use against her, without limitation, any and all information, in whatever form, that
13 she has provided pursuant to this plea agreement or otherwise.

14 10. The defendant understands that her sentencing may be continued, at the discretion of
15 the United States, until after the indictment and trial of any associates involved. This will also
16 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
17 waives any right she may have to any speedy sentencing and hereby agrees to any continuance of
18 her sentencing date as it may become necessary.

19 11. In exchange for the government's concessions in this plea agreement, the defendant
20 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
21 the sentence actually imposed in this case. The defendant understands and agrees that the
22 government has bargained for a criminal conviction arising from her criminal conduct. If at any
23 time defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for
24 whatever reason, or is rendered invalid for any reason, or if any change of law renders the conduct
25 for which she was convicted to be non-criminal, defendant agrees that she will enter a guilty plea
26 to another charge encompassing the same or similar conduct. In such event, defendant waives any
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1 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
2 constitutional restrictions as to the time of bringing such charges.

3 12. The defendant acknowledges that she has been advised of her rights as set forth below
4 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
5 had sufficient opportunity to reflect upon, and understands the following:

6 a. The nature and elements of the charge and the mandatory minimum penalty provided
7 by law, if any, and the maximum possible penalty provided by law;

8 b. Her right to be represented by an attorney;

9 c. Her right to plead not guilty and the right to be tried by a jury and at that trial, the
10 right to be represented by counsel, the right to confront and cross-examine witnesses
11 against her, and the right not to be compelled to incriminate herself, that is, the right not to testify;

12 d. That if she pleads guilty, there will not be a further trial of any kind on the charges to
13 which such plea is entered so that by entering into this plea agreement, she waives, that is, gives
14 up, the right to a trial;

15 e. Because this plea is entered pursuant to Federal Rule of Criminal Procedure
16 11(c)(1)(B), the defendant understands that she may not withdraw her guilty plea even if the court
17 does not accept the sentencing recommendation of the government or her counsel;

18 f. That, upon entry of a plea of guilty, or thereafter, the Court may ask her questions
19 about the offenses to which she has pled, under oath, and that if she answers these questions
20 under oath, on the record, her answers may later be used against her in prosecution for perjury or
21 false statement if an answer is untrue;

22 g. That she agrees that the plea agreement is voluntary and not a result of any force,
23 threats or promises apart from this plea agreement;

24 h. That she has read the plea agreement and understands it.

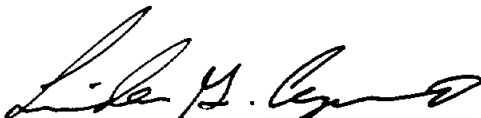
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2 I. The defendant is satisfied with the representation of her lawyer and feels that her
3 lawyer has done everything possible for her defense.

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5 DATED: 2/27/07


LINDA G. AGUERO
Defendant


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9 DATED: 2/27/07


JOAQUIN C. ARRIOLA, JR.
Attorney for Defendant

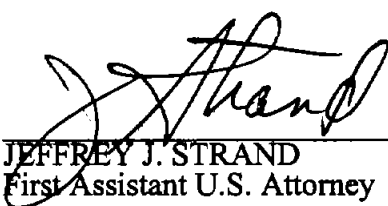
LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and CNMI


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13 DATED: 2/27/07

By:


ROSETTA L. SAN NICOLAS
Assistant U.S. Attorney

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16
17 DATED: 2/13/07


JEFFREY J. STRAND
First Assistant U.S. Attorney

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22 *The defendant agrees that the explosives and gun were transported in
23 interstate or foreign commerce. The defendant also agrees that she devoted
24 time, attention and labor to dealing in firearms and explosives as a regular
25 course of business with the principal objective of profit through the
26 repetitive purchase and resale of firearms and explosives.
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